

## REMARKS

This amendment is responsive to a Notice of Non-Compliant Amendment dated April 21, 2005. Applicant has corrected the deficiencies noted by the Examiner.

Claims 1-4 and 30-47 are pending in the present application. In an Office Action dated October 3, 2004, claims 30 and 36-47 were rejected and claims 31-35 were objected to. Applicant hereby amends claims 30, 31, 33, 35-38, 40, 42, and 44-47, and traverse the rejections as follows:

### Objections to the Drawings

The drawings were objected to under 37 C.F.R. 1.83(a) because features such as "a housing sized and shaped to cover a fin mounting fastener"; "a first shaft rotatable about an axis perpendicular to the bottom surface"; the locking mechanism used to rotate the first shaft"; etc., allegedly must be shown in the drawings. Applicant does not believe that any of the features mentioned in the Office Action need to be shown in the drawings under 35 U.S.C. 113 which states:

*"The applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented."*

Applicant believes that the specification more than adequately describes the subject matter and its use to one skilled in the art. Therefore, Applicant does not believe that any of the features mentioned in the Office Action need to be shown in the drawings. Nevertheless, Applicant traverses the objections as follows.

With regard to the objection that the housing sized and shaped to cover a fin mounting fastener, Applicant has amended the claims, removing the "sized and shaped" language and have substituted positive claim recitations instead. Support for this feature can be found in numerous sections of the specification, for example, in paragraph 0064 as follows:

*"Fin guard 1000 mounts to the surface of surfboard 106 over channel 1008 generally behind fin 1006 and covers a fin mounting*

fastener, such as a screw, bolt, rivet, clip, or other fastening device, generally located within channel 1008."

With regard to "the first shaft rotatable about an axis perpendicular to the bottom surface of the housing" in claims 33 and 40, Applicant does not believe this feature needs to be shown in the drawings, because it is adequately described in the specification in paragraph 0069 as follows:

"It should be understood that although this embodiment of fin guard 1000 comprises deadbolt 1100 being retractable and shaft 1102/tab 1004 being fixed with respect to housing 1002, fin guard 1000 could alternatively comprise a shaft/tab combination that is rotatable with respect to housing 1002 by using locking mechanism 1004, while deadbolt 1100 is fixed in an extended position as shown in FIG. 12. In this embodiment, housing 1002 is placed over channel 1008 with tab 1004 oriented parallel to channel 1008 and deadbolt 1100 aligned with channel 1008, allowing both deadbolt 1100 and tab 1004 to be inserted within channel 1008, bringing housing 1002 flush against channel 1008. Then, locking mechanism is placed in a locked position, whereby shaft 1102 and tab 1004 are rotated such that tab 1004 becomes perpendicular to channel 1008, lodging tab 1004 underneath a lip of channel 1008 (illustrated as lip 1400 in FIG. 14a)."

With regard to the locking mechanism used to rotate the first shaft in claim 34, Applicant also believes that this feature does not need to be shown in the drawings because this feature is adequately described in the specification in paragraph 0069:

Then, locking mechanism is placed in a locked position, whereby shaft 1102 and tab 1004 are rotated such that tab 1004 becomes perpendicular to channel 1008, lodging tab 1004 underneath a lip of channel 1008 (illustrated as lip 1400 in FIG. 14a)."

With regard to "the depression sized and shaped to accept the fin mounting fastener, Applicant has amended this claim to replace the "sized and shaped" language with positive recitation language and believes this feature is shown in Figure 13 as item 1304.

With regard to the feature of “placing a housing over the fin mounting fastener”, Applicant believes this is shown in Figure 10.

With regard to “rotating the first shaft around an axis” in claim 47, Applicant believes that this feature does not need to be shown in the drawings because this feature is adequately described in the specification in paragraph 0069:

Then, locking mechanism is placed in a locked position, whereby shaft 1102 and tab 1004 are rotated such that tab 1004 becomes perpendicular to channel 1008, lodging tab 1004 underneath a lip of channel 1008 (illustrated as lip 1400 in FIG. 14a).”

#### Objections to the Specification

The specification was objected to because the term “VELCRO” was not capitalized. Applicant has capitalized this term and has also added a registered trademark symbol.

#### Objections to the Claims

Claims 31, 33, 35, 36, 37, 44, and 47 were objected to because of various antecedent basis problems or wording issues. These claims have been amended to overcome the objections.

#### Rejections under 35 U.S.C. 112

Claims 36-42 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. It was alleged that the structure, material, or acts for performing the recited function is not clearly identified in the specification. Applicant respectfully disagrees.

Claim 36 lists “means for covering a fin mounting fastener” and “means for locking said means for covering to a bottom surface of the sports board”. Support for the means for covering a fin mounting fastener is found in Figures 10 – 14, which show a housing used to cover a fin mounting fastener. Further support can be found in the specification, in paragraph 0065 as follows:

“In one embodiment, fin guard 1000 comprises a housing 1002 and a locking mechanism 1004. Fin guard 1000 mounts to the surface of surfboard 106 over channel 1008 generally behind fin 1006 and covers a fin

mounting fastener, such as a screw, bolt, rivet, clip, or other fastening device, generally located within channel 1008."

Support for the means for locking said means for covering to a bottom surface of the sports board is also found in Figures 10 - 14 and in the specification in paragraph 0067 through paragraph 0073, which describe, in detail, the construction and use of a locking mechanism used to secure a housing to the bottom of a sports board.

Applicant believes that these figures and descriptions are adequate to satisfy 35 U.S.C. 112, paragraph 2 and therefore respectfully request that the rejections be withdrawn.

Claims 37-42 depend on claim 36 and were rejected based on their dependency on claim 36. Applicant believes that claim 36 is allowable, based on the above discussion and, therefore, claims 37-42 are also allowable.

Claims 37, 38, and 40 were rejected because the limitation "the housing" did not have sufficient antecedent basis. Applicant has amended these claims to overcome this rejection.

#### Rejection under 35 U.S.C. 102

Claims 30, 36, and 37 were rejected under 35 U.S.C. 102(b) as being anticipated by Cartwright (US 5,109,683). It was alleged that Cartwright teaches all of Applicant's claim limitations. Applicant has amended claims 30, 36, and 37 and traverses the rejection as follows.

With regard to claim 30 and 36, it was alleged that Cartwright teaches a housing that covers a fin mounting fastener. However, Cartwright teaches covering a mast track instead. With regard to claim 36, Cartwright fails to teach means for locking the covering means to a bottom surface of a sports board. Cartwright teaches covering a mast track, which is located on a top surface of a sailboard. These distinctions alone should be enough to overcome the rejection.

However, in addition, Applicant does not believe that Cartwright teaches a second shaft that is located a fixed distance from a first shaft, as is now claimed. The "second shaft" taught be Cartwright is removable from the longitudinal member 40, as shown in Fig. 2 of Cartwright. Further, the apparatus taught be Cartwright cannot function properly unless the "second shaft" is removable, because the longitudinal member 40 cannot be placed within the channel if the "second shaft" located a fixed distance from the "first shaft". The only way that the longitudinal member can be placed within the

channel is to first insert the first shaft into the channel and then slide the first member toward one end of the channel. Then, the "second shaft", being removed from the longitudinal member is placed within the channel and moved toward the other end of the channel. Only then is it locked to the longitudinal member.

In short, Applicant believes that because the "second shaft" of Cartwright is removable, Cartwright cannot anticipate Applicant's claims because the second shaft is not located a fixed distance from the first shaft.

It was also alleged that the body of the claim does not "breath life" into the recitation of securing a fin to a board, as mentioned in the preamble of the independent claims. Applicant notes that the claims refer to covering a *fin mounting fastener* and so Applicant believes that it is not necessary to recite the fin in the body of the claims. Applicant further believes that because the prior art does not show an apparatus that covers a fin mounting fastener, the claims are not anticipated.

It was also alleged that the limitations of claim 30 with respect to use limitations, such as "sized and shaped", are not sufficient to differentiate Applicant's invention from the prior art. Applicant has amended claim 30 to remove the "sized and shaped" limitations and replace that language with positive recitations, such as "a housing that covers a fin mounting fastener". It is believed that this language positively recites a housing that actually covers a fin mounting fastener, rather than a housing sized and shaped to perform that function.

#### Rejections under 35 U.S.C. 103

Claims 43-46 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cartwright. It was alleged that Cartwright inherently teaches the method steps of Applicant's claims. Applicant respectfully disagrees.

Regarding claim 43, Cartwright does not teach an apparatus for covering a fin mounting fastener, therefore, Applicant believes that Cartwright does not inherently teach a method for using Applicant's apparatus.

Regarding claim 44 Cartwright's "tab" is not parallel to the channel - it must necessarily be placed perpendicular to the channel.

With regard to claim 45, Cartwright fails to teach "rotating the object with respect to a channel of the sports board, thereby engaging a tab" (rotation of the object in Cartwright does not engage the tab - simply inserting the tab into "channels 32 and 34" and sliding the tab fore or aft is what engages the tab). Cartwright additionally fails to

teach "extending a second shaft into the channel, thereby preventing rotation of the object" (Cartwright's "second tab" does not prevent rotation of the "object" - only securing the "second tab" to the "object" prevents rotation).

With regard to claim 46, Cartwright does not teach an apparatus for covering a fin mounting fastener.

Claims 43 and 47 were rejected under 35 U.S.C. 103(a) as being unpatentable over Frizzell (US 5,934,963). It was alleged that Frizzell inherently teaches the method of using Applicant's invention. Applicant respectfully disagrees. Frizzell teaches an apparatus that *replaces* a traditional fin locking mechanism and, therefore, cannot *cover* a fin locking mechanism.

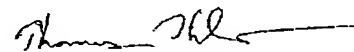
#### Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,

Dated: May 23, 2005

By:



Thomas M. Thibault  
Attorney for Applicant  
Registration No. 42,181

11340 Vista Sorrento Pkwy #306  
San Diego, California 92130  
Telephone: (858) 651-2356